

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID W. WILSON,

Plaintiff,

v.

MORALES, *et al.*,

Defendants.

Case No. 1:24-cv-01113 JLT BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
PLAINTIFF'S MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS, AND
DIRECTING PLAINTIFF TO PAY THE
FILING FEE WITHIN TWENTY-ONE DAYS

(Docs. 2, 9, 10)

David Wilson initiated this action, seeking to hold the defendants liable for violations of his civil rights while housed at California Substance Abuse Treatment Facility- Corcoran. (*See generally* Doc. 1.) Plaintiff filed a motion to proceed *in forma pauperis* with his complaint. (Doc. 2.)

The magistrate judge found Plaintiff is subject to the three strikes bar of 28 U.S.C. § 1915. (Doc. 9 at 1-2.) The magistrate judge noted Plaintiff alleged that he suffered a cough and sore throat but found “[t]he allegations in the complaint are vague and conclusory as to any threat of imminent serious physical injury.” (*Id.* at 3.) Therefore, the magistrate judge determined Plaintiff did not satisfy the exception from Section 1915(g) and recommended Plaintiff's request to proceed *in forma pauperis* be denied. (*Id.*)

Plaintiff filed a second application to proceed *in forma pauperis* on September 27, 2024 (Doc. 10), and timely filed objections on October 10, 2024 (Doc. 12). In his objections, Plaintiff

1 contends that while he is subject to 28 U.S.C. § 1915(g), he meets the imminent danger exception
2 and should therefore be permitted to proceed *in forma pauperis*. (Doc. 12.) Plaintiff argues that
3 prison officials are continuing a practice that has injured him or others similarly situated in the
4 past, and there is a continuing effect from such a practice, because after he was initially given
5 antibiotics to treat his sore throat and cough in January 2023, his sore throat worsened in February
6 2023. (*Id.*)

7 The Court does not find that Plaintiff's objections present grounds to overturn the
8 magistrate judge's Findings and Recommendations. Although Plaintiff's sore throat and cough
9 may have worsened between January and February 2023, he does not allege injuries more serious
10 than a cough and sore throat from that time until the filing of the complaint. Plaintiff's
11 allegations do not support a finding that Plaintiff is at risk of a "serious" physical injury.

12 According to 28 U.S.C. § 636 (b)(1), this Court performed a *de novo* review of the case.
13 Having carefully reviewed the matter, including Plaintiff's objections, the Court concludes the
14 Findings and Recommendations are supported by the record and proper analysis. Thus, the Court
15

ORDERS:

- 16 1. The Findings and Recommendations issued on September 24, 2024 (Doc. 9) are
17 **ADOPTED** in full.
- 18 2. Plaintiff's applications to proceed *in forma pauperis* (Docs. 2, 10) are **DENIED**.
- 19 3. Within **twenty-one (21) days** following the date of service of this order, Plaintiff
20 shall pay the \$405.00 filing fee in full to proceed with this action.

21 If Plaintiff fails to pay the filing fee within the specified time, this action will be dismissed
22 without further notice.

23 IT IS SO ORDERED.

24 Dated: October 16, 2024


25 UNITED STATES DISTRICT JUDGE